In the High Court of Judicature at Madras

Dated: 04/07/2003

Coram

The Honourable Mr.Justice P.D.DINAKARAN

Writ Petition No.18479 of 2003
and W.P.Nos. 18480 to 18483 of 2003
and
WPMP.NOS.23093 to 23106 of 2003

G.Ganesan ..Petitioner in both WP.
18479/03 & WPMPS.23093 TO
23095/03

K.Pugazenthi ..Petitioner in both WP.
18480/03 & WPMPS.23096 TO
23098/03

S.Subramanian ..Petitioner in both WP.
18481/03 & WPMPS.23099 TO
23101/2003

V.Rajaram ..Petitioner in both WP.
18482/03 & WPMPS.23102 TO
23104/03

J.Lakshmipraba ..Petitioner in both WP.
18483/03 & WPMPS.23105 &
23106/03
-Vs-

1.The Government of Tamilnadu,
rep.by the Secretary, Housing
& Urban Development Dept.,
Fort.St.George, Chennai-9.

2.The Chairman & Managing Director
Tamilnadu Housing Board, 331
Anna Salai, Chennai-35.

3.The Chief Engineer, Tamilnadu
Housing Board, 331, Anna Salai
Nandanam, Chennai-35.

4.The Superintending Engineer
Vellore Circle, TNHB,

Vellore-9. ..Respondents in both
WPS & WPMPS

(2)

5.The Executive Engineer &
Administrative Officer
TNHB, Tiruvannamalai Division
Tiruvannamalai. ..Respondent in both
WP.Nos.18479, 18481 &
18482 of 2003 & WPMP.NOS.
23093 TO 23095, & 23099
TO 23104 OF 2003
6.The Executive Engineer &
Administrative Officer
TNHB, Vellore Housing Unit
Vellore.
..Respondent in both
WPS.18480 & 18483/03&
WPMPS.23096 TO 23098 23105 & 23106 OF 2003

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr.S.James

For Respondent-1: Mr.M.S.Palanisamy, AGP

For Respondents 2 to 6 : Mr.D.Veerasekaran

:O R D E R

Mr.M.S.Palanisamy, learned Additional Government Pleader takes notice on behalf the first respondent. Mr.D.Veerasekaran, learned counsel takes notice on behalf of respondents 2 to 6.

2. The petitioners are diploma holders in Civil Engineering. They were appointed by the respondent Board as Technical Assistants in December 1989 on daily wages at Rs.34/- per day, which was increased from time to time. Now, the daily wage is at the rate of Rs.192/- per day.

(3)

Apprehending that their services would be terminated, they approached this Court in WP.Nos.8175 to 8179 of 2001 seeking to regularize their services and this Court, by a common order dated 10.3.2003, directed the second respondent to consider the representation of the petitioners made on 3.8.2000 for regularization of their services within three months from the date of receipt of the said order dated 10.3.2003.

3. As a result, by the impugned proceedings dated 9.6.2003, the second respondent passed the following order :

"The Board resolved the following after detailed discussion :

Considering that there are no construction activity at present in

Tamilnadu Housing Board and taking into consideration the reduction of staff, the request of the petitioners was examined in depth on the above analogy. The Board is of the considered view not to accede to the request of the petitioners representation dated 3.8.2000 and accordingly reject it."

4. Aggrieved by the said proceedings dated 9.6.2003, the petitioners seek for the issuance of a Writ of Certiorarified Mandamus to call for and quash the records in Letter No.P(T)-3-/65116/2003 dated 9.6.2 003 passed by the second respondent and further direct the respondents to regularize the services of the petitioners from the date of

(4)

initial appointment as Technical Assistant or Surveyor with all attendant benefits.

5. Even though the learned counsel for the petitioners contends that the petitioners are entitled for the benefits of the provisions of Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, it is not in dispute that the respondent Board is not notified as an establishment for the benefit of the provisions of the said Act. Therefore, the contention of the learned counsel for the petitioners that the petitioners are entitled for the benefit of the said Act is rejected.

6. The only remaining contention of the learned counsel for the petitioners is that since the petitioners were working under the Board since 1989, they are entitled to be regularized in the services of the Board on humanitarian consideration; otherwise, their right under Articles 19 and 21 of the Constitution of India would be infringed.

7. I am unable to appreciate the above contention for the reason that the question of regularization to the temporary appointees, much less, daily wagers does not arise in view of the decision of the Apex Court in the case of Ramakrishna Kamat & Others Vs. State of Karnataka & Others (JT 2002 II SC 88) wherein the Apex Court held that the persons appointed temporarily are not entitled to seek regularization of service.

(5)

8. However, the Apex Court in the case of Ramakrishna Kamat & Others Vs. State of Karnataka & Others (JT 2002 II SC 88) confirmed the view of the learned Single Judge and that of the Division Bench, restraining the State from terminating the services of the temporary employees till regular employments are made.

9. In the instant case, learned counsel for respondents 2 to 6 contends that the request of the petitioners could not be acceded, as there are surplus staff working in the Board.

10. Therefore, while rejecting the claim of the petitioners for regularization, there shall be a direction to the respondents not to terminate the services of the petitioners unless there are surplus staff in the required category.

11. The writ petitions are ordered accordingly. No costs. Consequently, the above WPMPS are dismissed as unnecessary.

Index : Yes
Internet : Yes

To

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Urban Development Dept., Fort.St.George, Chennai-9.

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3.The Chief Engineer, Tamilnadu Housing Board, 331, Anna
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Tiruvannamalai Division, Tiruvannamalai.

6.The Executive Engineer & Administrative Officer, TNHB,
Vellore Housing Unit, Vellore.

RS